

MINUTES OF BOARD MEETING # 436

March 8, 2005 12:00PM

Members Present:

Daniel W. Varin, Chairman
William Penn, V. Chairman
Timothy Brown
Robert Griffith
William Parsons
Frank Perry
Jon Schock
William Stamp, III
June Swallow

Members Absent:

Fred Vincent

*Member designee

Staff Present:

Kathleen Crawley
Elaine Maguire
Connie McGreavy
Brian Riggs
Tracy Shields
William Rivero
Thomas Walker

Guests:

Michael Pisaturo, Esq.
George Brown, Mapleroot Village
Brian Peterson, Coventry Girls Softball
Pasquale DeLise, BCWA
Senator Leonidas Raptakis
Mary Murphy, Bureau of Audits

1. CALL TO ORDER

With a quorum present, Chairman Varin called the meeting to order at 12:06 PM.

2. APPROVAL OF MINUTES:

Chairman Varin asked for a motion on the minutes. On a motion by Mr. Stamp, seconded by Mr. Parsons, the Board unanimously approved the minutes of the February 2005 Board meeting with one minor revision.

3. CHIEF BUSINESS OFFICER'S REPORT

Mr. Schock stated that the Finance Committee reviewed the report and recommended approval. He pointed out that the last spreadsheet shows that water surcharges revenues are still down for the months of December through February. Mr. Schock stated that water sales for the town of South Kingstown are also down reflecting a reduction in consumption for the winter months. Mr. Schock felt that things were expected to return to normal. On a motion by Mr. Schock, seconded by Mr. Parsons, the Board unanimously approved the Chief Business Officer's Report dated February 2005.

4. CHAIRMAN'S REMARKS

Mr. Varin reported that Mr. Perry and Mr. Penn were interviewed by the Senate Committee on Environment and Agriculture, which unanimously recommended their reappointments. The full Senate confirmed the appointments on March 1, 2005. Mr. Varin next reported on the RI Bays, Rivers and Watersheds Coordination Team created by the RI General Assembly in 2004, largely in response to fish kills in Greenwich Bay. The Coordinating Team includes a senior executive officer of the Board (General Manager); however, in the absence of a General Manager, Ms. Crawley and Mr. Varin were attending

meetings of both the Coordination Team and advisory groups. The Team has accomplished some housekeeping pending appointment of a Chair (which still requires Senate confirmation); this has not happened yet. Mr. Varin next reported that he is working with Ms. Erin Bray, a Brown University student, on her thesis regarding future water use in Coventry and West Greenwich with respect to differing development assumptions. Ms. Bray presented her thesis last month, which Mr. Varin and Ms. Crawley attended. He next described a meeting with about a dozen water suppliers in February to discuss several aspects of Water Supply Systems Management Plans (WSSMPs), legislation regarding confidentiality that pertains to equipment, the Major Users Technical Assistance Program and the Board Corporate loan fund. Apparently, water suppliers may not take advantage of the program since they would be subject to oversight by the RI Public Utilities Commission. Mr. Varin, Ms. Crawley and Mr. Riggs are scheduled to attend a meeting of the RI House Finance Committee this month to discuss the operating budget. Mr. Varin invited board members to join them. Lastly, Mr. Varin updated the Board on the ongoing audit, introducing Ms. Mary Murphy from the Board of Audits. Ms. Murphy reported that she was three-quarters of the way through the audit and needed to meet a few more staff people. She expects the fieldwork to be done and the report written by end of April. She anticipates that a few minor issues will need to be discussed. Once the audit is complete, she will review it with Ms. Crawley, after which it can be reviewed by the Board.

5. GENERAL MANAGER'S REPORT

Ms. Crawley, Acting General Manager, stated that Ms. Maguire was busy in the Big River Management Area (BRMA) with the Phase VI cutting and AMGEN reseeding projects which are both moving forward. The state's Purchasing Dept. is developing a lead assessment proposal. The fair market appraisal process is underway with an information session planned for tenants. The Land Use Plan contract is in the approval process at URI and is expected to be submitted to the Purchasing Dept. next week. A meeting with representatives of the RI Dept. of Environmental Management (DEM), the US Geological Survey and a land use project team is planned to develop a scope of work for the ecological assessment, slated to start in July. Mr. Riverso's Groundwater Protection Acquisition program is moving forward. Staff has requested a legal opinion from DEM's attorney, Mary Kay, regarding procedures for acquiring well sites. Staff is moving forward on Well 336 in Richmond and wells located on the Tuckahoe Turf property with a meeting planned this week. The Water Quality Protection Program is also progressing. Mr. Riverso continues to call suppliers to expend funds by the February 2006 deadline. Newport, Woonsocket and North Kingstown are working on land acquisition projects.

Ms. Crawley reported that Ms. O'Keefe is making tremendous progress on a first draft of an implementation report for the water management effort. Ms. O'Keefe organized a successful first meeting with the water suppliers, which provided staff with excellent ideas for the WSSMPs as well as other initiatives. Education and outreach efforts continue including work with the RI Drinking Water Week Committee. Mr. Walker's emergency interconnection program is progressing with the North Tiverton and South Kingstown projects. Mr. Walker developed a preliminary construction timeline for, and with, Bristol County Water Authority. The purpose of this effort is to ensure the timely issuance of bond monies to match the projected construction schedule. Work continues with the RI Rivers Council to legally define the term, "associated function", develop accounting procedures and discuss future budget needs.

Ms. Crawley attended two Legislative Committee hearings this month hosted by the House Committee on Environment and Agriculture and the House Finance Committee. She testified on the legislative grants for the Rivers Council that are part of the Board's FY 2006 Budget. She added that staff will be participating in the Land and Water Conservation Summit at URI. Ms. McGreavy continues work on web page updates, expanded water use reporting and database development. She recently completed technical work to ensure that the agency's data back up systems are working properly. The Board continues to work closely with the RI Bays, Rivers and Watersheds Coordination Team. Ms. Crawley attended the State Planning Council's Technical Committee meeting and provided input regarding the latest section of the Land Use Plan Update. Staff is also working with three Brown University students on some very timely topics; two students are focusing on the Kent County area.

Mr. Stamp asked what happens to the ecological study for the BRMA once it is completed. Ms. Crawley explained that the work scope is currently being refined and a meeting of experts in these types of projects is planned. Mr. Stamp asked what prompted this study; he wanted to know if the Board had initiated the action. Mr. Varin stated that the project is in the budget this year. The study is an essential step that must be done before the Board can develop the ground water. Mr. Stamp asked if the study was required. Mr. Varin said no; he did not believe the agency would need a wetlands alteration permit, but decided to go through the steps required by DEM in good faith.

6. COMMITTEE REPORTS AND ACTION ITEMS RESULTING

A. Nominating Committee—Chair Frank Perry

- (1) Nominations, Chair—RI Water Resources Board
- (2) Nominations, Vice Chair—RI Water Resources Board
- (3) Nominations, Secretary—RI Water Resources Board

Mr. Perry listed the slate of candidates as: Dan Varin, Chair; Bill Penn, Vice Chair Kathleen Crawley, Secretary. Mr. Perry stipulated that the Secretary position was recommended for a period not to exceed 90 days, since Ms. Crawley is in an acting capacity for General Manager. Mr. Perry noted that nominees for Chair and Vice Chair must be public members of the Board, of which there are currently five. Mr. Perry made a motion to approve the slate of officers with Mr. Schock seconding the motion. Mr. Varin asked if there were any other nominations; there were none. Mr. Varin called for a vote which was unanimous.

Mr. Varin added that he continues to call the Governor's Chief of Staff regularly regarding the General Manager's appointment.

B. Public Drinking Water Protection Committee—Chair, Robert Griffith

(1) Supplemental Water Supply Study Phase II:

- (a) Maguire Group Invoice #7—Payment Requested: \$25,347.25; Recommended payment: \$25,347.25. Request for Approval

Mr. Griffith stated that this request was for Phase II of the Supplemental Water Supply study. It is a continuation of the first phase of the study, which dealt with supplemental water supply needs in the Providence Water Supply Board's service area. This second phase of the project complements the first phase and is 35% complete. Mr. Griffith moved to approve the amount requested with Mr. Perry seconding the motion. Mr. Schock noted that the Finance Committee recommended approval. Mr. Penn asked whether the Board has the full \$845,000 in the budget. Mr. Riggs responded that \$275,000 is in a restricted receipt account and \$400,000 is in this year's capital budget. Another \$200,000 is currently allocated in next year's capital budget. Carry forwards and some funds will be attempted as the current year allocation exceeds estimated current year expenditures. Mr. Riggs stated that currently total funds are allocated to finish the project, but future allocations are not guaranteed. Mr. Varin called for a vote to approve the payment, which was unanimous.

(2) Emergency Interconnection Program:

- (a) North Tiverton Fire District Invoice #12—Payment Requested: \$41,415.21; Recommended payment: \$41,415.21. Request for Approval

Mr. Griffith explained the Board inadvertently paid the fire district the full amount of an interconnect reimbursement, rather than 50%. Instead of having the fire district pay the Board back, the agency drew on that amount for continuing payments until it was exhausted. Now the Fish Road interconnection is complete, the over payment has been exhausted and there is a balance due of \$41,415.21. Mr. Griffith made a motion for approval which was seconded by Mr. Perry. Mr. Schock added that the Finance Committee also recommended approval. There was no further discussion and the vote was unanimous.

(3) Water Supply Systems Management Plans (WSSMP)

(a) Harrisville Fire District—WSSMP—30-Month Interim Report—Request for Approval

Mr. Griffith stated that this request was for approval of an interim report. Mr. Griffith added that not all of the comments or responses to comments were received by the state's deadline, which means that the interim report is automatically approved. Nonetheless, the Harrisville Fire District turned in all information as requested and all responses were found to be satisfactory. The PDWP Committee recommended official approval, rather than acceptance by default. Mr. Griffith made a motion to that effect with Mr. Perry seconding the motion. The motion carried unanimously. Mr. Varin noted that Harrisville had included a three-year historical summary of the relationship with the Pascoag Utility District. He anticipated that Harrisville wished to document past problems related to the contaminated wells, the water emergency and mitigation efforts taken. There was not a comparable document on record from Pascoag.

C. Property Committee Chair, Frank Perry

(a) Big River Management Area—Coventry Girls Softball League Lease Agreement with the Water Resources Board. Request for Approval

Mr. Perry stated that the Property Committee reviewed the lease agreement. He referenced a revised set of plans for the property that were approved under the Board's previously established requirements. The process is to forward the lease to the State Properties Committee. Mr. Perry introduced Brian Peterson who stated that the survey was complete, and that the plans have changed slightly with some relocation of fields and parking. It is a better plan—fields are now as far away as possible from residential areas and cars should not pile up near major roads. The softball league has agreed to use water conservation methods whenever irrigation occurs. The number of practice fields is down from four to two; everything else corresponds to the original plan. A meeting with DEM's Forestry Division is planned regarding trees to keep or harvest. Mr. Perry stated that Jay Aaron from DEM would meet with Ms. Maguire, the BRMA property manager once the State Property Committee grants approval.

Mr. Penn asked what the parking surface would be. Mr. Peterson replied that pea stone would be used which is permeable. Mr. Penn asked how many parking spaces were planned. Mr. Peterson said that there would be enough to accommodate players and others for two games' worth with no street parking. Mr. Schock wanted to clarify whether the contours were in 1' or 2' increments. He was concerned about what looked like a 20' elevation which is a steep embankment. Mr. Peterson said the Commonwealth Engineers had to design a "shelf" for the girls' field, but he did not think the differential was that much. Mr. Schock asked if the State Properties Committee would be reviewing this and Mr. Perry answered, yes. Mr. Schock next inquired if wetlands had been flagged. Mr. Peterson reported that no wetlands were located on the property, but that a retention pond may be needed. Mr. Schock recommended some stabilization of the embankment on the west side (southeast corner) where there is fill. He felt the slope of the grade was beyond the limit. Mr. Peterson emphasized the need to keep drainage on the property.

Ms. Swallow asked if there were plans for bathrooms, drinking fountains, or a snack bar which would require a water supply. Mr. Peterson stated that an agreement between the Board and the town prohibited the use of water for these purposes. The snack bar would provide bottled water or soda. The rest rooms (from AMGEN) were fully contained units that would be pumped out onsite. Plans were to sink a well for irrigation, but it would not be potable water. No coffee or soda would be made from the nonpotable water supply. Mr. Stamp asked whether approval had already been granted by the State Properties Committee. Mr. Perry clarified that the concept had been approved and now the lease has to be approved. The Committee will want to see the metes & bounds survey. Mr. Stamp asked if the use meets the open space requirements and whether the Board's legal counsel had approved the use. Mr. Varin replied, yes pointing out that recreation is specifically noted [as an acceptable use] in the statute. Mr. Perry indicated that the new facility is identical to the one that exists for soccer and baseball on Fish Hill Road. Mr. Stamp stated that when this property was taken for a specific use and the rules of open space applied, the intent was not in accordance to what it should be with respect to taking land. Mr. Stamp opposed the use of the BRMA for

recreation because it was not the original purpose behind the [taking by] eminent domain. He felt that approving this use would open the door to more such uses in the future. Mr. Varin explained that the vast majority of properties in the BRMA were acquired by negotiation; only a small number went to court. Mr. Stamp believed that even in negotiations, there was a specific purpose for the land, that is, a reservoir. Mr. Perry moved to approve the lease and send it forward to the State Properties Committee. Mr. Parsons seconded the motion. Mr. Schock added that the Finance Committee also approved the project; he asked staff to continue reviewing the design. Mr. Varin called for a vote which was unanimous with the exception of Mr. Stamp who voted to oppose.

D. Construction, Engineering and Operations Committee—Chair June Swallow

(a) Child Street Treatment Plant Payment Requisition # 5—Payment Requested: \$61,400.00; Recommended payment: \$61,400.00. Request for Approval

Ms. Swallow reported that the payment requisition was for a release of 5% of the retainage. She moved approval which was seconded by Mr. Parsons. Mr. Schock stated that the Finance Committee recommended approval. Mr. Varin clarified that this payment was only part of the retainage. Mr. DeLise was invited to comment, but he declined. The vote was unanimous.

Mr. Penn stated that the Board spends a lot of time approving disbursements under preapproved contracts. He recommended that the Board modify its financial procedures to allow routine payments to be approved by committees and only be brought before the Board when contracts change or when there are unusual situations. If there was interest, he volunteered to draft the language. Mr. Varin agreed that a process is needed to specify those occasions. Mr. Penn added that some actions require approval by two committees with the Finance Committee generally delivering the second approval. Mr. Penn posed the concept of one committee with program oversight and the second for financial oversight. He said the last few projects have been reviewed and gone to the Board which is redundant and takes time. Mr. Varin was confident that staff could list conditions under which projects can be approved, as long as payment was within an established project budget. Mr. Perry added that staff could include a list of payments approved in monthly reports so that all members would be aware. Mr. Varin asked if there were any objections; there were none. Mr. Varin asked staff to work with Mr. Penn to draw up the procedures and/or amend the existing procedures.

**D. Finance Committee—Chair William Penn
(Concurrent with Public Drinking Water Protection Committee)**

Mr. Schock stated that there were no other payment requests.

E. Legislative Committee—Chair Daniel W. Varin

(1) 2005 Legislation Introductions

Chairman Varin pointed out a summary chart prepared by staff that listed bills that have already been reviewed. He pointed out one correction to an item on the list: Item 1D Senate Bill #0705. Ms. Crawley advised that a word is missing in the bill synopsis: add the word, “not” into the sentence, “...drinking water may not be safe...” Chairman Varin stated that letters had been sent to the RI General Assembly on bills reviewed and members would be discussing a series of new bills for first time review in a new and easier format.

(a) S-0461 & H-6091 Water System Supply Management Plans-Confidentiality
Relating to Separation of Powers Recommendation – For Discussion

Chairman Varin stated that this bill had been previously discussed among members and also with about a dozen water suppliers who attended a meeting last week. It was introduced at the request of the ACLU. The bill would eliminate the confidentiality requirement for critical sections of WSSMPs, a change in procedure that was made with respect to terrorism and/or vandalism affecting water supply systems. Key points [water infrastructure] included pumping stations, valves, etc. Mr. Varin stated that this info is still available and that anyone can go to a water supplier and ask for it.

Water suppliers can decide whether to give out the information requested. The bill would also make the plans available in libraries. Mr. Varin reported that water suppliers who attended the meeting opposed it. Mr. Brown and Mr. Perry indicated their opposition, noting that discussions from last year were still germane. Mr. Perry stated that there is a lot of information in water supply plans, and if they are randomly circulated and not treated as confidential documents, then there would be access to too many things. Mr. Brown made a motion to oppose the bill seconded by Mr. Perry. Ms. Swallow acknowledged that keeping documents confidential makes program management difficult. There are many procedures to use in terms of seeing and using information in the plans, and she expected that this was a problem for Board staff, in that waivers needed to be processed repeatedly. She added that DOH has ways to get the information independent of the confidentiality rule. Mr. Perry was aware that the process creates problems for agencies like DEM and DOH; if agency staff need copies of plans, they would use FOIA (Freedom of Information Act) laws so that people can get the information from them. DEM and DOH cannot give out information easily once the bill passed. Mr. Schock indicated that the town of South Kingstown got such a request and the town determined if the information would be made available. Mr. Varin referred members to the second page of the bill to a list of information that is currently available to the public in executive summaries. Mr. Perry believed that if this bill passed, some water suppliers might not submit the plans. Mr. Varin stated that if the bill passed, the Board would have to change the content requirements. Mr. Varin called for a motion. Mr. Brown moved to oppose the bill with Mr. Perry providing a second. The vote was unanimous.

(b) S-0737 Agency Response Requirement to Legislative Inquiry-72 hours
Recommendation – Oppose

Chairman Varin reported that this bill was also reviewed last year. He believed it would be a problem for smaller agencies responding to requests. For example, if a staff person were on vacation, it would not be possible to comply within the time specified. Also, if a request came in on a Friday afternoon, staff couldn't comply. Bigger organizations may not have the same problems. Mr. Varin described the situation at the Board, where whole program areas may not be addressed in people's absence. It would not be helpful to give out the wrong information just to make the deadline. He recommended the bill be opposed. Mr. Perry moved to oppose the bill with Ms. Swallow seconding the motion. Ms. Swallow added that large agencies would also have the same problem. Mr. Stamp asked if there was currently a limit in terms of time to process a reply. Mr. Varin indicated that the agency attempt to respond to every request in a timely manner. Mr. Stamp asked what circumstance might have triggered the bill. He felt that there were times when getting information quickly is needed to make decisions. He wondered whether the time period was negotiable. Mr. Varin answered that he was not sure why the bill was submitted. Mr. Perry surmised that someone was probably stonewalled, agreeing that the burden is onerous, particularly for small agencies. He was open to other ways, including negotiation. Mr. Penn noted that it would be a misdemeanor if agencies did not comply. Mr. Varin called for a vote to oppose the bill, which was unanimous.

(c) H-5267 Condemnation Powers –Limits if benefit to Private Party
Recommendation – Oppose

Chairman Varin reported that this bill might be a response to a current US Supreme Court case involving the city of New London, CT. The matter is an issue nationwide. He described a similar case in Providence when the Providence Redevelopment Agency was acquiring property on South Main Street and one owner refused to negotiate. The process was dragged out, but the state eventually ruled the taking was okay. The next US Supreme court ruling could change that. Mr. Varin noted that staff recommended opposing the bill. Mr. Stamp asked how this bill would affect the Board. Mr. Varin linked it to the wellhead acquisition and watershed protection program, explaining that negotiations are on a voluntary basis. For instance, if a town was building a water line extending across various private properties, there will always be a small number of parcels that have to be acquired. The entity doing the condemnation must make the case that the purpose is for

the public. Mr. Stamp stated that the RI Agricultural Council is looking at all bills related to eminent domain. The agricultural community fears the use of eminent domain in inappropriate ways in order to take land for the public good. Farmers support the Connecticut case to determine if the taking is unjust; they want to protect their land. Mr. Varin said that no taking of private property should result in ownership in an amount greater than 20% of non-state ownership. If a water supplier were building a line for a municipality or a private company, the question would be, are any of those nonstate ownerships. Mr. Varin was not certain, but the Board has done it Richmond and North Smithfield. Mr. Varin was not certain whether water systems were public bodies and/or whether they qualify as state ownership. If not, then 100% would go to nonstate ownership. Mr. Penn felt the Board should wait for the federal ruling before taking action. Mr. Varin agreed, recommending the Board take no position on the bill. Mr. Perry agreed with Mr. Penn. Mr. Griffith stated that the correct position is to set the bill aside until the US Supreme Court states its position. He made a motion to that effect with Mr. Penn seconding the motion. The vote was unanimous.

(d) S-0705 & H-5994 Water Samples Reported to Supplier and Director of Health
Recommendation – Support

Chairman Varin thought that laboratories already report test results to DOH, but that is not the rule. Mr. Griffith asked if the bill responds to previous reporting problems. Ms. Swallow indicated that it is intended to, but the process does not work. Laboratories may not know which samples are potentially problematic. Mr. Perry believed that laboratories were supposed to generate the reports and notify the water companies as well as DOH. Ms. Swallow stated that water suppliers still need to report in the same manner they always did. Mr. Perry questioned whether out-of-state laboratories would be handled in the same manner. Ms. Swallow said that many test results do not stand alone on the basis of one test. Mr. Perry added that results could be contaminated depending on the sampling method used. Mr. Varin commented that false positives are also possible. He described a case when the RI Dept. of Administration- Statewide Planning Division, was doing a water quality management plan. Part of the work involved daily testing for several parameters on water from the Pawtuxet River. Results indicated that the water was 100% PCBs (polychlorinated biphenyls, i.e., no water). The Providence Journal called to write an article, but the next day, the result was back to normal. Ms. Swallow mentioned that the intent is if the water supplier happens to miss a bad testing result, then there is a second set of eyes for review. Mr. Varin wondered whether the bill could be supported in concept, but with some specific language changes. Mr. Schock asked what the DOH position was. Ms. Swallow replied that DOH wants labs to send information directly to the agency in electronic format. The agency did not oppose or support the bill. DOH wants electronic data from labs, not suppliers, with appropriate identifiers on reporting forms to link the data to the appropriate water suppliers. This will burden laboratories since they will have to get more information. Mr. Brown made a motion to oppose the bill because it was poorly written and that the burden to report to DOH is already in place. Mr. Schock seconded the motion. The vote was unanimous, with the exception that Ms. Swallow abstained, as did Mr. Griffith who did not feel he had enough information. Mr. Perry stated that the Board should oppose the bill on the basis that information is lacking regarding implementation. Mr. Varin directed staff to prepare a letter accordingly.

(e) H-5277 Riparian Rights Retained for Public Use Recommendation – Support

Chairman Varin reported that the only change to existing law is at the last line on the first page. The bill applies to marinas. Mr. Brown suggested that the Board take no action on the bill. Mr. Stamp asked why staff was recommending support. He stated that in the agriculture community, water is protected and this bill reinforces that. Mr. Perry clarified that the bill requires the state to retain riparian rights. Upon discussion, Mr. Varin used an example: if the RI Dept. of Transportation acquired a large parcel on a riverbank to build a bridge, they would not return the rights pertaining to unused portions of land to anyone for private purposes. Mr. Varin suggested further interpretation by legal counsel. Mr. Brown made a motion to take no position on the bill with Mr. Perry seconding. The motion passed unanimously.

(f) S-0449 Quasi-Public Eminent Domain to Require Two-Thirds Majority Vote Recommendation-
No Position

Chairman Varin reported that the Board Corporate is a quasi public corporation. If this bill passes, the Board Corporate must secure the approval of two-thirds or more of all appointed members (excluding ex officio members) on matters concerning eminent domain. For this agency, DOH, DEM, DOA and the RI Economic Development Corporation were ex officio. Mr. Brown made a motion that the Board take no position on the bill with Mr. Parsons seconding. The motion passed unanimously.

(g) H-5445 Proposed Agency Rules, Regulations to Require Study on Impact to Agricultural
Industry Recommendation – Support

Mr. Perry described the purpose of the legislation. Mr. Stamp moved to approve the bill with Mr. Parsons seconding the motion. Mr. Perry was concerned with making a specific exemption for one group. Mr. Stamp felt strongly that agriculture should be considered. Mr. Varin advised members that existing state law considers impact on small businesses already. Mr. Stamp claimed that agriculture is one of biggest sectors affected in communities, and that farms are an important resource in terms of open space. The agriculture community wants the ability to be informed. Mr. Perry opposed the bill, as did Mr. Schock who added that the bill applies to local towns. Mr. Stamp stated that communities need to recognize that agriculture must be accommodated and open spaces maintained in the future. The bill provides this directive. Mr. Penn asked what would happen if a study showed a negative impact, pointing out that a study would not necessarily result in protection. Mr. Griffith stated that the Administrative Procedures Act (APA) already requires that proposed rules or changes to existing regulations are subject to public hearings. All agencies must do outreach before the fact and there is an obligation on the part of the public to keep informed. Most communities and public agencies are organized so that citizens can stay informed. Mr. Griffith reported that the Statewide Planning Division goes to extraordinary lengths to identify stakeholders or affected communities whenever it is promulgating new rules and to duly notice those stakeholders. Hearings are expensive, particularly only the agency representatives and the stenographer attend. Mr. Stamp countered that he represented a small community, and that when rules are passed, it is difficult to address every one. He believed that agriculture deserved special consideration. Mr. Griffith reiterated that a procedure is already in place. Mr. Varin concurred that the law currently applies to any state or local agency subject to the APA, which includes every city and town. Mr. Stamp made a motion, second by Mr. Parsons to support the bill. The motion failed with Mr. Stamp, Mr. Parsons and Mr. Varin in support and Mr. Penn, Mr. Brown, Mr. Griffith, Mr. Schock, Ms. Swallow and Mr. Perry opposed. Mr. Griffith instructed staff to indicate in the communication to the appropriate committee that the Administrative Procedures Act (APA) covers this procedure and the requirement is redundant.

(h) S-0492 & H-5992 Cities/Towns Authorized to Create Dam Management Districts
Recommendation – Support

Mr. Varin explained that this bill would enable cities and towns to create dam management districts. Mr. Schock offered his support as a member of the Governor's Dam Safety Task Force. He said that the problem is funding dam maintenance because these structures are generally owned by one person who is saddled with liability insurance and the cost of maintaining the structures. Communities can authorize dam management districts and provide funding mechanisms for dam owners. Mr. Schock stated that many dams in the state are in poor condition. Mr. Varin advised members that the bill does not mandate the establishment of dam management districts, but rather it is enabling legislation. Mr. Perry commented that exactly how municipalities create districts is vague and the bill does not require a definition of the district. He added that perhaps, vagueness is good since dams affect

people upstream and downstream. Mr. Schock agreed. Mr. Varin said that there was probably no general rule that covers all situations. Mr. Schock made a motion to support the bill with Mr. Perry seconding. The motion passed unanimously.

(i) S-0395 & H-5990 MTBE Limits (.5%) by January 1, 2007 Recommendation – Support

Mr. Varin explained that this bill would eliminate the additive MTBE from gas supplies. Mr. Schock stated that MTBE is hydrophilic and disperses low in the groundwater. If it were taken out, then there would be a requirement for another additive. Mr. Varin agreed with this logic. Mr. Penn noted that MTBE makes gas more efficient and less polluting in terms of air quality. He questioned whether the bill should go a step further to suggest an additive, given that MTBE is bad for the water supply. Mr. Griffith did not feel the Board was in a position to suggest gasoline additives. Unfortunately, the use of MTBE resulted in unintended consequences. Mr. Brown said that some states use alcohol, and that it is expensive to get MTBE out of the water supply. Mr. Stamp stated that air quality is not the Board's concern. Mr. Penn countered that ecology is integrated; air pollution affects water supply. Mr. Schock stated that any additive might have adverse impacts. Mr. Griffith reported that a number of other states have moved to ban MTBE, some of those being New England states. Mr. Penn indicated that California banned MTBE. Mr. Stamp stated that the agriculture community suffers from EPA mandates. Ms. Swallow asked what DEM's position was. Ms. Crawley replied that this is a Governor's bill and that DEM supports it. Mr. Perry made a motion to support the bill seconded by Mr. Stamp. Mr. Schock abstained explaining he did not have enough information for a determination.

(j) S-0506 & H-5989 Cesspools Phase-Outs Recommendation – Support

Mr. Varin reported that this was the same bill before the Board as last year. Mr. Schock clarified that last year's bill included all cesspools, and this version applied to higher risk cesspools. Mr. Perry added that the bill includes a five-year implementation timetable (2010-2015). Mr. Schock noted that there are four different tiers of cesspools described, and also wished to know if this was a DEM bill. Mr. Varin answered, yes. Mr. Griffith stated that the bill addresses cesspools proximal to drinking water supplies. Mr. Varin pointed out a typographical error in line 23. Mr. Griffith moved to support the bill with Mr. Perry seconding the motion. The vote was unanimous.

F. Strategic Committee—Chair Daniel W. Varin

Chairman Varin did not have anything to report under this item.

G. Personnel Committee—Chair Jon Schock

Mr. Schock did not have anything to report under this item.

7. NEW BUSINESS *(This item was discussed in the Chair's Report)*

(1) Reappointments:

- a. William J. Penn—Received Senate Confirmation
- b. Frank Perry— Received Senate Confirmation

8. OTHER BUSINESS

(a) Shad Factory Briefing—Pasquale DeLise, Executive Director, Bristol County Water Authority

Chairman Varin introduced Mr. DeLise who reported that a schedule had been submitted for repairs and replacement of the pipeline. A Request for Proposal has been issued. Beta Engineering did a feasibility study years ago and the pipeline route is the east side of the Palmer River (mostly in streets). Mr. DeLise said there would be a very small impact on wetlands near the Kickemuit Reservoir. There has been a great deal of progress since last month. He expected the engineering phase to require fourteen months and construction to take two years. Mr. Varin stated that it was important to schedule

bond issues with a great deal more precision than in the past. The state has new procedures and the feds prohibit making money on borrowed money that is invested known as “arbitrage”. Mr. DeLise said that the water authority would get feedback from local towns and the state of Massachusetts on a schedule. Mr. Penn stated that the project might need bridge financing if timing is out of sync. Mr. Varin said the Board has the ability to do that. Mr. DeLise noted that there is \$2.3 million available to work with which is enough to pay for engineering and some of the construction. He suggested that there could also be a budget schedule and timeline for when the money is needed. Mr. Penn wished to distinguish between when money would be available versus when money would be needed, and that this may be a mismatch. Ms. Crawley stated that staff is putting a schedule together with Bristol County Water Authority to coordinate with the state budget office.

9. RECESS OF BOARD FOR BOARD CORPORATE BUSINESS

With no objection, Chairman Varin recessed the Board for Board Corporate Business at 1:40PM.

10. RETURN FROM BOARD CORPORATE BUSINESS

At 1:50PM, the Board returned from Board Corporate business.

11. DISCUSSION OF THE BROWN (41 PARK LANE) MATTER

Chairman Varin reported that there have been a couple of Board and committee meetings spent on the Brown matter. He stated that Michael Pisaturo, the attorney for the Browns, and Senator Raptakis would address the Board. Mr. Pisaturo thanked members for the opportunity to be heard and offered some background. Presentation by Mr. Pisaturo:

Mr. Pisaturo stated that it was his second time before the Board and he had attended three to four meetings with the State Properties Committee and the State Building Commissioner. Mr. Pisaturo noted that the State Building Commissioner had upheld the Cease & Desist order with a recommendation to settle the case. The Browns own a mobile home in Mapleroot Village and want to put an addition on. They received permission from the Mapleroot Corporation and were approved by Coventry’s building and zoning officials as well as the local fire marshal. The Browns spent a lot of money on architectural design plans and the addition was 80% done. After the Cease & Desist order was entered, it was discovered that the Browns did not have the proper permissions from the state. Mr. Pisaturo filed an application to finish the construction project which has been dormant for about a year. He reported that the State Board of Appeals clarified its decision that if the Board approved the application, then the Cease & Desist order would be moot and the project could go forward. Mr. Pisaturo was looking for resolution by the Board, adding that he was not privy to the discussions held by the Board’s Property Committee, which conducted this matter in executive session. He asked whether the item fell under the state’s Open Meetings law. Mr. Pisaturo’s understanding of the Property Committee’s recommendation was that the Board does not have authority to give permission or settle the matter. However, the Browns need an explanation from the Board since no final resolution regarding what is considered “development” was given. This was one of the primary issues sent from the full Board to the Property Committee to resolve, and he wished to know the status.

Mr. Brown did not feel the Brown’s construction project could be defined as “development”, but rather, anything that affects the water resources of the state would be considered development. He explained that he was not talking about undeveloped open space; the area is a developed mobile home park with many additions to structures evident (even for properties on state land, namely cement slabs and asphalt driveways). Mr. Pisaturo emphasized that no actions were taken regarding anyone else’s construction and wondered if those projects were considered development. He did not want the Browns to be singled out. Mr. Pisaturo reported that the town of Coventry has been issuing permits for years, and that rules should not be selectively enforced against the Browns. Mr. Pisaturo was requesting approval of the application to complete construction. He did not wish to litigate—just finish the project. Mr. Pisaturo advised members to be

cautious in interpreting the Open Meetings law. He questioned whether the item should have been handled in executive session. Mr. Pisaturo also encouraged Board members to visit the site, adding that no backhoes were used—it is an existing structure. Further, the project will not affect the water resources of the state.

Mr. Varin thanked Mr. Pisaturo for his presentation. Mr. Penn asked how much money the Browns have spent? Mr. Pisaturo replied between \$30,000-\$35000. Mr. Penn asked what the Browns paid for the home. Mr. Brown replied, approximately \$20,000. Mr. Varin stated that the action to close part of the Property Committee meeting was taken with advice of the Board's legal counsel. He reminded members that Mr. DeDentro, State Building Commissioner, stated in a letter that he would not approve the plans in their current form. Mr. Pisaturo believed that Mr. DeDentro wanted to be assured that the structure is safe and sound, and then, he would give his approval. Senator Raptakis wanted to know what the stumbling block was in terms of allowing the Board to make a decision on this specific parcel. He offered to draft legislation specific to the Brown's project. He felt that if the Board's "hands are tied", then, perhaps the problem can be addressed in another way. Mr. Varin was open to an alternative approach.

12. OPEN CALL FOR EXECUTIVE SESSION IN ACCORDANCE WITH R.I.G.L. 42-46-5(A)(2) LITIGATION AND (5) PROPERTY and RIGL 42-46-5(a)(1) JOB PERFORMANCE—GENERAL MANAGER POSITION

Mr. Varin explained that the second item would not be taken up; there is no further information. Mr. Perry made a motion to go into executive session, seconded by Mr. Penn. Mr. Varin asked for a roll call vote which was unanimous.

Mr. Griffith:	Yes	Mr. Penn:	Yes	Mr. Brown:	Yes	Mr. Perry:	Yes
Ms. Swallow:	Yes	Mr. Schock:	Yes	Chairman:	Yes	Mr. Stamp:	Yes
Mr. Parsons:	Yes						

13. RETURN FROM EXECUTIVE SESSION

Mr. Varin stated that the Board voted to seal the minutes of the Executive Session. Mr. Perry made a motion that this construction converts the mobile home to a permanent fixture to the real estate which is prohibited by the legislation and the Board is thus, powerless to contravene and allow this construction. Mr. Penn seconded the motion. The motion carried unanimously.

14. ADJOURNMENT

On a motion by Mr. Schock, seconded by Mr. Stamp, the Board unanimously voted to adjourn at 2:30 PM.

Minutes prepared by Connie McGreavy and
Respectfully Submitted,

Kathleen Crawley

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